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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/725,968	12/02/2003	David R. Cheriton	062891.1127	5978

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BAKER BOTTS L.L.P.  
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DALLAS, TX 75201-2980

EXAMINER
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AGA, SORI A

ART UNIT	PAPER NUMBER
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2609

NOTIFICATION DATE	DELIVERY MODE
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07/16/2007

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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## Office Action Summary

Application No.

10/725,968

Applicant(s)

CHERITON ET AL.

Examiner

Sori A. Aga

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12/02/2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 08/03/2006
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION*****Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claim 1, 2, 4, 11, 12, 14, 21, 22 and 24 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-6 of U.S. Patent No. 6,091,725. Although the conflicting claims are not identical, they are not patentably distinct from each other because all the limitations of claim 1 of present invention are included in claims 1-6 of said patent.

All the limitations of claim 1,2,4,11,12,14,21,22 and 24 of present invention are included in claims 1-2 of said patent. In addition, all the limitations of said claims are also included in claims 3-4 of said patent. All the limitations of said claims are also included in claims 5-6 of said patent. Said claims of said patent anticipate claim 1 of present invention.

3. Claim1-4,6,8,10,11-14,16,18,20,21-24,26,28 and 30 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims1,2,19,20 and 24 of U.S. Patent No. 6,798,776. Although the conflicting claims are not identical, they are not patentably distinct from each other because all the limitations of said claims are included in said patent.

The following table shows the corresponding claims in current application and said patents.

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<u>Claim number &amp; limitations</u> (Current invention)	<u>Claim number &amp; limitations</u> (Patent 6, 091,725)	<u>Claim number &amp; limitations</u> (Patent 6,798,776)
<u>1,11,21</u> ...Determining whether the packet is associated...	<u>1,3,5</u> ...checking table for an entry matching said index value...	<u>1,19,20</u> ...comparing ...address pair in datagram...with a stored listing ...associated with a virtual path...
<u>1,11,21</u> ...creating new virtual path...	<u>2,4,6</u> (all of claim 2)	<u>1</u> ... creating and storing a virtual path... <u>19,20</u> ...a virtual path ...is created...
<u>1,11,21</u> ...processing...	<u>1</u> ...routing said packet according to said entry...	<u>1</u> ... processing the... packet based on the stored... <u>19</u> ... packet is processed according to ...associated ...record. <u>20</u> ... packet is processed based on the stored virtual path...
<u>2,12,22</u> ...comparing content of the packet to ...virtual paths	<u>1,3,5</u> ...checking table for an entry matching...	<u>1,19,20</u> ...comparing ...address pair in datagram...with a stored listing ...associated with a virtual path...
<u>3,13,23</u> ...record identifies how a particular packet is to be processed according to existing....		<u>19</u> ...record comprising specifications for processing the respective datagram packets...
<u>4,14,24</u> ...content of packet includes a destination address and a source address...	<u>1,3,5</u> ...packet containing a source address and a destination address...	<u>1,19,20</u> ...packets each including a source-destination address pair...
<u>6,16,26</u> ...packet includes a type field...		<u>2</u> ...each datagram packet further includes a type field...
<u>8,18,28</u> ...storing the new virtual path with any existing virtual path...		<u>1</u> ...creating and storing a virtual path... <u>19, 20</u> ...a virtual path...is created and stored
<u>10,20,30</u> ...packet is an Ethernet datagram packet...		<u>1,24</u> ...packet is an Ethernet datagram packet...

***Claim Rejections - 35 USC § 112***

4. Claim1 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 includes two limitations that read ‘...in response to the packet not being associated with any existing virtual path...’ and ‘...in response to the packet being associated with the existing virtual path...’ The two statements seem to be conflicting. Examiner interprets these phrases to show two mutually exclusive scenarios where two possible outcomes are presented in response to each outcome. Therefore claim1 is examined on its merits with such interpretation. Rejection can be overcome by indicating in the claim that said actions are in the alternative to one another in response to the outcome in the comparison.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claim1-4, 11-14, 21-24 rejected under 35 U.S.C. 102(b) as being anticipated by Schibler et al (US 5528592) (herein after Schibler).

Regarding claim 1 where a method for processing a packet of data in a communication network is given; Schibler teaches that the invention relates to method and apparatus for route processing in a telecommunication network.

Regarding the method comprising:

- Receiving the packet, Schibler teaches "...In operation, ingress line interface 12 performs a service adaptation function on the incoming traffic received from input ports 14..."( Column 2 line 26-28).
- Determining whether the packet is associated with an existing virtual path in the communication network; Schibler teaches "...Upon receiving a BOM/EOM cell at route cell ... compares destination and source address information within the BOM/EOM cell with similar information within CAM ..." (column 6 lines 37-39). CAM is the memory where routing information is stored. (27). And Schibler teaches "...The routing information includes ...a virtual circuit identifier ...". Therefore, Schibler teaches a method for route processing that compares address information in a packet with routing information (which includes Virtual circuit identifier). After comparing the address information with the Virtual circuit identifier, a decision is made based on whether a match is found or not (column 6 line 40). Therefore, 'determining' and 'comparing' to find a match are substantially the same.
- Creating new virtual path to process the packet in response to the packet not being associated with any existing virtual path; Schibler teaches "...If no match is found, router controller 60 must request routing information from control processor..."(column 6 lines 56-58)

- Processing the packet according to the existing virtual path in response to the packet being associated with the existing virtual path; Schibler teaches:  
“...upon verification, the routing label and VCI are stored within BOM cell and VCI table...” (column 6 lines 46-48). And once routing information is determined for a particular BOM cell, VCI table is appropriately updated and remaining cells within the packet associated with the BOM cell need not be sent through ingress router 44. Transmit agent can access routing information from VCI table for all cells within a particular packet (column 7 lines 5-10). Therefore schibler teaches that in the case of a match from said determination, the cells are processed according to the information stored in the table regarding the Virtual path.

Regarding claim 11 and 21, all the limitations of claims 11 and 21 are substantially the same as claim 1.

Regarding claim 2, where all the limitations incorporated in the method of claim 1 are included, and where the method further comprises comparing a content of the packet to one or more records of existing virtual paths, Schibler teaches that the destination and source addresses in the packets are compared with VCI as discussed above regarding claim 1 (column 6 lines 37-39).

Regarding claims 12, and 22 all the limitations of claims 12 and 22 are substantially the same as claim 2.

Claim 3: all the limitations of claim 2 are included in claim 3. Regarding each record identifying how a particular packet is to be processed according to an



associated existing virtual path; Schibler teaches that information within the packets is compared with routing information within the CAM as discussed regarding claim 1. Routing information includes a routing label that determines an output port for packet transmission and a virtual circuit identifier that determines switching paths within a network to connect a source user to a destination (column 1 lines 47-50).

Regarding claim 13 and 23, all the limitations of claims 13 and 23 are substantially the same as claim 3.

Regarding claim 4, where the method of claim 1 is included and where the content of the packet includes destination address and a source address and a source address for use in comparison with one or more records of existing virtual paths; Schibler teaches: "...Upon receiving a BOM/EOM cell at route cell ... compares destination and source address information within the BOM/EOM cell with similar information within CAM ..." (column 6 lines 37-39).

Claim 14 and 24, all the limitations of claims 14 and 24 are considered to be substantially the same as claim 4.

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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8. Claims 5,6,8,15,16,18,25,26 and 28 rejected under 35 U.S.C. 103(a) as being unpatentable over Schibler as applied to claim 1 above, and further in view of Lyon et al (US 5892924) (herein after Lyon).

Claims 5 and 6: all the limitations of claim 1 are included in claims 5 and 6.

Regarding the content of the packet including a type field, Schibler does not explicitly teach packets having a type field. However, Lyon in the same field of endeavor (method and apparatus for processing packets) teaches a packet with source port and a type field (column 15 line 62-67). It would have been obvious to include a source port and type field in the packets discussed by Schibler. Source ports are useful in indicating applications. And flow identifiers for the various flow types allow a most specific match operation to be performed (column 16 line 3-5).

Claim 15 and 25, all the limitations of claims 15 and 25 are considered to be substantially the same as claim 5.

Claim 16 and 26, all the limitations of claims 16 and 26 are considered to be substantially the same as claim 6.

Claim 8: all the limitations of claim 1 are included in claim 8. Schibler teaches all the limitations of claim 1 as discussed above regarding claim 1. However, Schibler does not explicitly teach the method of storing the new virtual path with any existing virtual paths. However Lyon teaches "If it is determined ...that the virtual channel connection is unassigned...the switch proceeds to ...establish the new virtual channel connection as specified in the Move Root request message..."(column 42 lines 40-45). It would have been obvious to add new

virtual paths in schibler's CAM memory in order to be able to handle new connections using schibler's invention.

9. Claim 7, 10, 17, 20, 27 and 30 rejected under 35 U.S.C. 103(a) as being unpatentable over Schibler as applied to claim 1 above, and further in view of applicant's own admission (herein after admission).

Claim 7: All the limitations of claim 1 are included in claim 7. Schibler teaches all the limitations of claim 1. However Schibler does not explicitly teach that the packet is processed according to a predetermined general purpose processing in response to the packet not being associated with any existing virtual path.

However, Admission teaches that routers generally require general purpose processing (page 6 lines 3-4). It would have been obvious to add a general purpose processing in order to have a back up system in instance where the steps mentioned in Schibler fail (i.e. for backup purposes).

Claim 17 and 27: all the limitations of claims 17 and 27 are considered to be substantially the same as claim 7.

Claim 10: All the limitations of claim 1 are included in claim 10. Schibler teaches all the limitations of claim 1. However Schibler does not explicitly teach that the packet is an Ethernet datagram packet. However, Admission teaches "...The most widely used local area network is commonly known as Ethernet...". (page 4 line 21). Therefore, it would have been obvious at the time of the invention make Schibler's packets compatible with Ethernet standard as specified by IEEE in

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order to make the invention compatible with the most widely used system (and hence with more networks).

Claims 20 and 30: all the limitations of claims 20 and 30 are considered to be substantially the same as claim 10.

10. Claims 9, 19 and 29 rejected under 35 U.S.C. 103(a) as being unpatentable over Schibler as applied to claim 1 above, applicant's own Admission as applied to claim 7 above and further in view of Lyon et al (US 5892924) (herein after Lyon).

Claim 9: All the limitations of claim 7 are included in claim 9. Regarding the method of removing a least recently used existing virtual path to make room for the new virtual path; Lyon teaches, "...A system node removes the flow's state ...to reclaim the label for reuse...the controller for the system node queries the ATM switch hardware ... to see whether a specific channel has been active recently... If that flow has no recent traffic...will... remove the flow state...". Therefore it would have been obvious for a person having ordinary skill in the art to remove the least recently used path in order to reclaim the label for reuse. (column 19 lines 25-48).

Claim 19 and 29, all the limitations of claims 19 and 29 are considered to be substantially the same as claim 9.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sori A. Aga whose telephone number is (571) 270-1868.

The examiner can normally be reached on M-Th 7:30-5:00, F 7:30-4:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Garber can be reached on (571) 270-1868. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

S.A.

A handwritten signature in black ink, appearing to read "Yuwen Pan", with a stylized flourish above the name.